

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**IN RE ANDROGEL ANTITRUST
LITIGATION (II)**

CASE NO. 1:09-MD-2084-TWT

**DIRECT PURCHASER CLASS
ACTIONS**

**DIRECT PURCHASER
INDIVIDUAL ACTIONS**

**ROCHESTER DRUG CO-OPERATIVE,
INC., ET AL.,**

Plaintiffs,

v.

**UNIMED PHARMACEUTICALS, INC.,
ET AL.**

Defendants.

CASE NO. 1:09-CV-956-TWT

**LOUISIANA WHOLESALE DRUG CO.,
INC., ET AL.,**

Plaintiff,

v.

**UNIMED PHARMACEUTICALS, INC.,
ET AL.,**

Defendants.

CASE NO. 1:09-CV-957-TWT

**SOLVAY'S OPPOSITION TO PLAINTIFFS' MOTION
TO COMPEL DEFENDANTS TO PRODUCE WITNESSES
ON PATENT MERITS ISSUES FOR DEPOSITION**

MEIJER, INC., ET AL., Plaintiffs, v. UNIMED PHARMACEUTICALS, INC., ET AL. Defendants.	CASE NO. 1:09-CV- 958-TWT
STEPHEN L. LAFRANCE PHARMACY, INC. ET AL. Plaintiffs, v. UNIMED PHARMACEUTICALS, INC., ET AL. Defendants.	CASE NO. 1:09-CV- 2913-TWT
RITE AID CORPORATION, ET AL., Plaintiffs, v. UNIMED PHARMACEUTICALS, INC., ET AL. Defendants.	CASE NO. 1:09-CV- 2776-TWT
WALGREEN CO., ET AL., Plaintiffs, v. UNIMED PHARMACEUTICALS, LLC, ET AL. Defendants.	CASE NO. 1:09-CV- 3019-TWT
SUPERVALU, INC., Plaintiff, v. UNIMED PHARMACEUTICALS, LLC, ET AL. Defendants.	CASE NO. 1:10-CV- 1024-TWT

The issue before the Court in this Motion is the same issue raised in the motion filed by Abbott Products, Inc. f/k/a Solvay Pharmaceuticals, Inc. and Unimed Pharmaceuticals, LLC (collectively, “Solvay”) to disqualify its former expert, Dr. Maibach, and any lawyer for Plaintiffs who has been tainted by Dr. Maibach. The question presented is whether Plaintiffs’ counsel should be permitted to take depositions on the merits of the ’894 patent even though they have learned Solvay’s confidential information through the retention of Solvay’s former consulting expert. Solvay cannot allow any counsel that are tainted—whether directly or indirectly—to depose Solvay’s patent witnesses. Thus, apart from the disqualification issue, there simply is no dispute.

Since learning of Plaintiffs’ inappropriate contacts with Solvay’s former expert, Solvay has sought to compromise with Plaintiffs on the scheduling of the patent-merits depositions. Both before and after Plaintiffs filed their motion, Solvay offered to make the requested witnesses available conditioned on the outcome of the disqualification motion. The parties are also in ongoing negotiations over deposition dates in May or June, which would presumably follow a ruling from the Court on the disqualification issue. Valentine Decl. Ex. A

(Singla email dated Apr. 12, 2011); Ex. B (Chan email dated Apr. 20, 2011).¹ Plaintiffs do not appear to be seeking anything beyond what Solvay has already offered, and the Court's ruling on the disqualification issue will moot the present Motion entirely. Indeed, the timing and tenor of Plaintiffs' brief suggests that they have filed this Motion principally to create an opportunity to file a sur-reply brief regarding the disqualification issue.

The Court should not be burdened with hearing identical motions—particularly motions such as this one that are unnecessary and will soon be moot. *See Brannon v. Allied Interstate, Inc.*, 2010 WL 5463254, at * 1 (S.D. Ga. Dec. 29, 2010) (“The motion to compel is denied, since plaintiff has failed to show that he has made a good faith effort to resolve the discovery dispute without court intervention.”). Defendants request that the Court deny as moot Plaintiffs' Motion to Compel.

Respectfully submitted this 25th day of April 2011.

Teresa T. Bonder**
Georgia Bar No. 703969

/s/ John Roberti
Mark W. Ryan*
John Roberti*

¹ Solvay also offered to allow the patent merits depositions to proceed immediately if Plaintiffs gave assurances that they would sequester tainted attorneys from those depositions, Valentine Decl. Ex. A (Singla email dated Apr. 12, 2011), and made clear that it did not object to moving forward on depositions related to non-patent issues, Valentine Decl. Ex. C (Roberti letter dated March 8, 2011).

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Products, Inc. f/k/a Solvay
Pharmaceuticals, Inc. in all actions
except Walgreen Co. v. Unimed
Pharmaceuticals, LLC, 1:09-cv-3019*

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* Practicing pursuant to this Court's
Initial Case Management Order

*Counsel for Unimed Pharmaceuticals, LLC and Abbott Products, Inc. f/k/a Solvay
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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1D, counsel hereby certifies that the foregoing memorandum has been prepared in accordance with Local Rule 5.1 using Times New Roman 14 point font.

Respectfully submitted this 25th day of April 2011.

/s/ John Roberti

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Initial Case Management Order

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed a true and correct copy of **SOLVAY'S OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL DEFENDANTS TO PRODUCE WITNESSES ON PATENT MERITS ISSUES FOR DEPOSITION; DECLARATION OF REBECCA VALENTINE; EXHIBIT INDEX TO VALENTINE DECLARATION; AND EXHIBITS A – C TO VALENTINE DECLARATION** with the Clerk of the Court using the CM/ECF system, which will automatically send e-mail notification and allow access to the filings to all counsel of record.

Date: April 25, 2011

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